

DISABILITY RIGHTS OHIO

October 18,

2012

Wanda Lillis
Office of Legal Services
Columbus City Schools
270 East State Street
Columbus, Ohio 43215

Dear Ms. Lillis:

Thank you for your response to the Investigative Report on the use of seclusion rooms in Columbus City Schools (CCS). We disagree with your characterization of the report as containing misleading or inaccurate information as explained more fully below. In addition, we submit that the problems identified require an action plan to minimize further risk of physical and emotional harm to students with disabilities who are receiving educational services within the district.

First, you disagree with the statement that the Ohio Department of Education (ODE) does not regulate restraint and seclusion in Ohio's schools. For a multitude of reasons, we maintain the accuracy of this proposition. At the time of the investigation, there were no proposed rules or policy from the state. Furthermore, as you acknowledge, there is a 'draft'; the state has only proposed a rule and policy; they are not yet in effect and will not be in effect until well into the next calendar year. There may also be changes to the drafts after ODE reviews the public comments that are due on October 24, 2012. Disability Rights Ohio will be submitting comments to ODE regarding a number of significant problems with the proposed rule and policy including but not limited to the fact that:

- Seclusion is permitted despite any empirical evidence that it is necessary or effective;
- Transitional holds (a restraint that restricts breathing and can cause death in a matter of minutes) are permitted;
- ODE oversight and enforcement provisions are weak and insufficient.

Even if the rules and policies were in effect, they represent the floor of standards and not the best practices to ensure the optimal outcomes for students. Districts should strive for maximum performance instead of minimum compliance.

The report is not based on 'conjecture' but instead, documentation provided by the district and interviews with students and parents. Additionally, Disability Rights Ohio consulted with Dr. Janice LeBel, EdD, ABPP, a national expert on these matters. Dr. LeBel is a licensed psychologist, and well known author of many scholarly works concerning the subject of the use of restraint and seclusion in U.S. school settings and positive alternatives to these measures. Disability Rights Ohio engaged Dr. LeBel to review the ODE's proposed policy and rule as well as the documents provided by Columbus City Schools and her feedback informed the conclusions contained in the report.ⁱ

Second, it is important to note that the incidences we reviewed included all of the written information provided by the district, not just the documentation related to the three individuals who were interviewed. Many of the 244 incidences involving approximately 80 students would have violated the proposed ODE policy and rules, had they been in effect. Specifically, seclusion (and restraint) were often used for minor infractions such as noncompliance and not when the student's behavior presented a physical danger to self or others.

Third, regarding the case of the individual student referred to in your letter:

- We reviewed episodes where the student was placed in seclusion when there was no documentation that the student presented a danger to self or others for example, for refusing to come out of the bathroom. In some instances, it appeared that the function of seclusion was punishment.
- All students with disabilities have the right to a free appropriate public education, including individualized positive behavioral supports, no matter the height or weight of the student. Even when a student is dangerous, he or she may be removed without placing the student in a room with a closed metal door and foot-latch.
- The language and tone contained in your letter essentially blames the victim. It includes references to behavior that the district is 'dealing with' (twice) as a 'problem' as opposed to trying to help youth in distress whom the district should be committed to educating. To locate the 'problem' within the student relieves the school system of the responsibility to remedy the problem and creates a tacitly hostile educational environment for the students where they become tantamount to the enemy.
- War-story descriptions are functionally meaningless since they are completely decontextualized. It is impossible to know about the true risk posed without seeing/known about all the contributing factors (staff/peers/time/environmental factors) – most particularly staff – since it is the interaction with authority/limit setters that most often results in conflict.
- It is noteworthy that your letter does not deny that the student contracted a staph infection after urinating in the seclusion room.

Fourth, regarding CPI training, experts advise that:

- Such procedures are for crisis management only, when other interventions have failed. These procedures are not a substitute for positive behavioral supports and are only one component of what schools need to have in place for addressing challenging behaviors. Staff are trained how to restrain individuals, not how to avoid dangerous behavior in the first place or how to teach appropriate alternative behaviors;
- Yearly training is insufficient as evidenced by the use of restraint and seclusion in violation of the purported CCS policies.

- A student doesn't 'need' crisis intervention; instead, staff resorts to it when there has been a program failure.

You also state that CCS implemented PBIS district-wide during the 2006-2007 school year. PBIS was established as a school-focused intervention to maximize academic climate and the learning environment. PBIS was not developed as an alternative to the use of restraint and seclusion. Dr. LeBel advises us that there is very limited data about the use of PBIS and its impact on seclusion and restraint. These methods have different intents altogether. Your statement conveys a confusing message that PBIS is a remedy to seclusion/restraint use, which is not the case.

Fifth, while your letter denied that staff use basket holds, a student demonstrated to the investigator being restrained in such a manner and also, the district provided us with documents that included the use of such a hold.

Sixth, regarding ODE complaint procedures, you state that parents receive notice of rights when there is a placement or eligibility change; neither is relevant to the use of seclusion. Moreover, we found documentation that a parent withdrew her consent and the district refused to accept her wishes. We also question the effectiveness of complaint procedures when there are no rules to which schools are to conform their conduct.

Finally, the district's oversight is clearly, woefully inadequate. At the most basic level, there was confusion and inaccurate information about where seclusion rooms were located within the district. There was no evidence of analysis of trends and patterns or of continuous improvement activities. If the district has any data regarding efforts and the efficacy of any actions which have reduced the use of seclusion and restraint, please provide us with this information.

You indicated in your letter that "if the District learns these items are not being followed we will take appropriate action." The information the district provided to us indicates that school personnel are violating the district's policies and therefore, action is required. Appropriate action includes putting in place systems that ensure the safety of students and staff and affords all students with disabilities, regardless of size or disability, the right to a free appropriate public education in the least restrictive setting. The district needs to implement research-based best practices Until significant and appropriate action is taken, students will continue to experience physical and emotional trauma.

We request that an action plan be developed in conjunction with the appropriate outside consultants who will monitor the implementation of the plan and make recommendations for improvement. Instead of waiting for ODE's final regulation, the CCS administration needs to provide leadership and proactively address the problem with all deliberate speed before any more staff and students are seriously, possibly irreparably injured.

Further, we request that all seclusion/ 'processing' room doors be removed immediately. We plan to conduct an inspection of these rooms to confirm that the doors have been removed.

Please respond and indicate the district's intent to implement such an action plan, along with a timeline for action steps.

Sincerely,

Susan G. Tobin

Chief Legal Counsel

Cc: Gene T. Harris, Ph.D., Superintendent
Gilda Battle Taylor, Interim Chief Office
Amy Dennis, Director Exceptional Children
Michael Sawyer, Acting Superintendent, Ohio Department of Education

Consultant References:

- LeBel, J., Nunno, M., Mohr, W.K., & O'Halloran, R. (2012). Restraint and seclusion use in U.S. school settings: Recommendations from allied treatment disciplines. *American Journal of Orthopsychiatry*, 82(1), 75–86.
- National Association of State Mental Health Program Directors (NASMHPD) (2012). National executive training institution: A training curriculum for the reduction of seclusion and restraint, 10th Edition. Alexandria, VA. National Association of State Mental Health Program Directors, Office of Technical Assistance.
- Tracy, R., Donnelly, M., & Stultz, T. (2002). Decreasing the risk of death during restraints: A Logansport State Hospital initiative. Eisenberg Award Nomination, System Innovation. Logansport, IN: Logansport State Hospital.